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# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

MARQUETTE PETERSON, on behalf of herself
and all others similarly situated,

Plaintiff(s),

-against-

COLLECTO, INC. D/B/A EOS CCA and JOHN DOES 1-25,

Defendant(s).

Civil Case Number:
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## **CIVIL ACTION**

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

## **LOCAL CIVIL RULE 10.1 STATEMENT**

1. The mailing addresses of the parties to this action are:

MARQUETTE PETERSON 51 Belhurst Lane Willingboro, New Jersey 08046

COLLECTO, INC. D/B/A EOS CCA 700 Longwater Drive Norwell, Massachusetts 02061

## **PRELIMINARY STATEMENT**

2. Plaintiff on behalf of herself and all others similarly situated ("Plaintiff"), by and through her attorneys, alleges that the Defendant, COLLECTO, INC. D/B/A EOS CCA ("EOS

CCA") and JOHN DOES 1-25 their employees, agents and successors (collectively "Defendants") violated 15 U.S.C. § 1692 *et seq.*, the Fair Debt Collection Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

### **JURISDICTION AND VENUE**

- 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violations of 15 U.S.C. § 1692 *et seq*.
- 4. Venue is proper in this district under 28 U.S.C. §1391(b) and 15 U.S.C. § 1692k(d) because the acts of the Defendant that give rise to this action, occurred in substantial part, in this district and at least one of the Plaintiffs resides in this jurisdiction.

### **DEFINITIONS**

5. As used in this complaint, the terms "creditor," "consumer," "debt" and "debt collector" are defined at 15 U.S.C. § 1692a.

### **PARTIES**

- 6. Plaintiff is a natural person, a resident of Burlington County, New Jersey and is a "Consumer" as defined by 15 U.S.C. § 1692a(3).
- 7. EOS CCA maintains a location at 700 Longwater Drive, Norwell, Massachusetts 02061.
- 8. EOS CCA uses the instrumentalities of interstate commerce or the mails to engage in the principal business of collecting debt and/or to regularly engage in the collection or attempt to collect debt asserted to be due or owed to another.
  - 9. EOS CCA is a "Debt Collector" as that term is defined by 15 U.S.C. § 1692(a)(6).

10. John Does 1-25, are currently unknown Defendants whose identities will be obtained in discovery and at that time will be made parties to this action pursuant to the Federal Rules of Civil Procedure (hereinafter "FRCP"); Rule 15, Rule 20 and Rule 21. Plaintiff's claims against the currently unknown Defendants arise out of the same transaction, occurrence or series of transactions arising from known Defendant's actions and are due to common questions of law and fact whose joinder will promote litigation and judicial efficiency.

## **CLASS ACTION ALLEGATIONS**

- 11. Plaintiff brings this action as a state-wide class action, pursuant to Rule 23 of the FRCP, on behalf of herself and all New Jersey consumers and their successors in interest (the "Class"), who were harmed by the Defendant's conduct in violation of the FDCPA, as described in this Complaint.
- 12. This Action is properly maintained as a class action. The Class is initially defined as:

All New Jersey consumers for whom Defendant communicated to any person credit information, which is known to be false and/or for whom Defendant failed to communicate to any person that a disputed debt was disputed as set forth herein.

The class definition may be subsequently modified or refined. The Class period begins one year prior to the filing of this Action.

- 13. The Class satisfies all the requirements of Rule 23 of the FRCP for maintaining a class action:
  - a. <u>Numerosity:</u> The Class is so numerous that joinder of all members is impracticable because there are hundreds and/or thousands of persons who

- were harmed by the Defendant's conduct in violation of the FDCPA. Plaintiff is complaining about a standard conduct that occurred to at least fifty (50) persons.
- b. <u>Commonality:</u> There are questions of law and fact common to the class members which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:
  - i. Whether the Defendants violated various provisions of the FDCPA;
  - ii. Whether Plaintiff and the Class have been injured by the Defendants' conduct;
  - iii. Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result of Defendants' wrongdoing and if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and
  - iv. Whether Plaintiff and the Class are entitled to declaratory relief.
- c. <u>Typicality:</u> Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories.
- d. Adequacy of Representation: Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class. Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.

- 14. A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates no unusual difficulties in the management of this class action.
- 15. A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a Class Action, class members will continue to suffer losses of statutory protected rights as well as damages.
- 16. Defendant(s) have acted on grounds generally applicable to the entire Class, thereby making appropriate final relief with respect to the Class as a whole.

## **STATEMENT OF FACTS**

- 17. Plaintiff is at all times to this lawsuit, a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
- 18. Sometime prior to November 19, 2020, Plaintiff allegedly incurred one or more financial obligations ("OBLIGATION or OBLIGATIONS") for which Defendant reported information to one or more national credit reporting agencies.
- 19. The OBLIGATIONS arose out of a transaction, in which money, property, insurance or services, which are the subject of the transaction, are primarily for personal, family or household purposes.
- 20. Plaintiff incurred the OBLIGATIONS by obtaining goods and services which were primarily for personal, family and household purposes.
  - 21. Plaintiff did not incur the OBLIGATIONS for business purposes.

22. The OBLIGATIONS did not arise out of a transaction that was for business use.

23. Each OBLIGATION is a "debt" as defined by 15 U.S.C. § 1692a(5).

24. At some time prior to November 19, 2020, the OBLIGATIONS were placed with

Defendant for the purpose of collection.

25. At the time the OBLIGATIONS were placed with Defendant for the purpose of

collection, the OBLIGATIONS were past due.

26. At the time the OBLIGATIONS were placed with Defendant for the purpose of

collection, the OBLIGATIONS were in default.

27. At the time the OBLIGATIONS were referred to EOS CCA for the purpose of

collection, the OBLIGATIONS were in default pursuant to the terms of the agreement creating

the obligation and/or by operation of law.

28. Plaintiff caused to be delivered to Defendant a letter dated November 19, 2020,

which was addressed to Defendant. Exhibit A, which is fully incorporated herein by reference.

29. The November 19, 2020 letter was sent to Defendant in connection with the

collection of the OBLIGATION.

30. The November 19, 2020 letter which was sent to the Defendant stated in part:

RE:

Marquette Peterson

Creditor: VERIZON

Alleged Amount Due: \$179.00

Please be advised that I dispute the above debt.

31. After the date of the dispute, Defendant knew or should have known that the credit

information concerning the OBLIGATIONS would be communicated to creditors and other

persons.

- 32. The credit information communicated to these creditors and other persons did not indicate that the OBLIGATIONS were disputed.
- 33. The credit information communicated to these creditors and other persons concerning the OBLIGATIONS was false.
- 34. Defendant failed to communicate to any person that the OBLIGATIONS were disputed.
- 35. Since November 19, 2020, Defendant has communicated to at least one person, credit information which is known or should be known to be false.
  - 36. EOS CCA knew or should have known that its actions violated the FDCPA.
- 37. Defendants could have taken the steps necessary to bring their actions within compliance with the FDCPA, but neglected to do so and failed to adequately review its actions to ensure compliance with the law.

#### POLICIES AND PRACTICES COMPLAINED OF

- 38. Defendants' failure to report a disputed debt as such violates the FDCPA, by *inter alia*:
  - (a) Using false, deceptive or misleading representations or means in connection with the collection of a debt;
  - (b) By communicating credit information which is known to be false or should be known to be false; and
  - (c) Using a false representation or deceptive means to collect or attempt to collect a debt.
- 39. On information and belief, Defendant engaged in the practices described herein, for at least 50 natural persons within New Jersey within one year of this Complaint.

#### COUNT I

# FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. § 1692 et seq. VIOLATIONS

- 40. Plaintiff, on behalf of herself and others similarly situated, repeats and realleges all prior allegations as if set forth at length herein.
- 41. Defendant violated 15 U.S.C. § 1692e of the FDCPA by using any false, deceptive or misleading representation or means in connection with its attempts to collect debts from Plaintiff and others similarly situated.
- 42. Defendant violated 15 U.S.C. § 1692e of the FDCPA in connection with Plaintiff and others similarly situated.
- 43. By failing to communicate that the OBLIGATION was disputed to one or more of the credit reporting bureaus, Defendant engaged in a false, deceptive or misleading representation or means in connection with the collection of the debt.
- 44. Defendant violated 15 U.S.C. § 1692e(2)(A) of the FDCPA by falsely representing the character or legal status of the debt.
- 45. By failing to communicate that a disputed debt was disputed, Defendant made a false representation of the character or legal status of the debt.
- 46. By communicating credit information which is known to be false or should be known to be false, Defendant made a false representation of the character or legal status of the debt.
- 47. Section 1692e(8) of the FDCPA prohibits a debt collector from communicating to any person credit information which is known to be false or should be known to be false, including the failure to communicate that a disputed debt is disputed.

- 48. Defendant violated 15 U.S.C. § 1692e(8) of the FDCPA by communicating to any person credit information which is known to be false or should be known to be false.
- 49. Defendant violated 15 U.S.C. § 1692e(8) of the FDCPA by failing to communicate to any person that the OBLIGATION was disputed.
- 50. Defendant violated 15 U.S.C. § 1692e(8) of the FDCPA by failing to communicate to one or more of the credit reporting bureaus that the OBLIGATION was disputed.
- 51. Section 1692e(10) prohibits the use of any false representation or deceptive means to collect or attempt to collect any debt.
- 52. By failing to communicate that the OBLIGATION was disputed as described herein, Defendant engaged in a false representation or deceptive means to collect or attempt to collect the debt.
- 53. Congress enacted the FDCPA in part to eliminate abusive debt collection practices by debt collectors.
- 54. Plaintiff and others similarly situated have a right to free from abusive debt collection practices by debt collectors.
- 55. Plaintiff and others similarly situated have a right to have the Defendant abide by its obligations under the FDCPA and those specifically found at 15 U.S.C. § 1692e(8).
- 56. Plaintiff and others similarly situated have suffered harm as a direct result of the abusive, deceptive and unfair collection practices described herein.
- 57. Plaintiff has suffered damages and other harm as a direct result of the Defendants' actions, conduct, omissions and violations of the FDCPA described herein.
- 58. Defendant's failure to act as described herein caused harm to the credit of Plaintiff and others similarly situated.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) Declaring that this action is properly maintainable as a Class Action and

certifying Plaintiff as Class representative and her attorneys as Class Counsel;

(b) Awarding Plaintiff and the Class statutory damages;

(c) Awarding Plaintiff and the Class actual damages;

(d) Awarding pre-judgment interest;

(e) Awarding post-judgment interest.

(f) Awarding Plaintiff costs of this Action, including reasonable attorneys'

fees and expenses; and

(g) Awarding Plaintiff and the Class such other and further relief as the Court

may deem just and proper.

**DEMAND FOR DOCUMENT RETENTION AND PRESERVATION** 

Plaintiff and others similarly situated demand that each Defendant, and its agents, or

anyone acting on its behalf, preserve and be immediately restrained from altering, deleting, or

destroying any documents or records that are described herein and/or that are relevant to this

Complaint.

s/ Ben A. Kaplan

Ben A. Kaplan, Esq. (NJ 0337712008)

## **DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

Dated: January 12, 2021 Respectfully submitted,

By: s/Ben A. Kaplan

Ben A. Kaplan, Esq. (NJ 0337712008)

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Attorneys for Plaintiff

## **CERTIFICATION PURSUANT TO LOCAL RULE 11.2**

I, hereby certify that the matter in controversy is not the subject of any other court, arbitration or administrative proceeding.

Dated: January 12, 2021

s/Ben A. Kaplan

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properties (= eigenvalues lined up along a single curve) is not as strong as for the cooled configurations.

For the manifestation of the index theorem on the lattice and also other ideas such as the modified quenched approximation [15] the most important feature of the clover term is however the generation of additional real eigenvalues. This property can be seen clearly from the four plots in Fig. 3. In particular we found, that the additional eigenvectors with real eigenvalues are generated in pairs of opposite chirality. This fact can be understood by analyzing how the spectral flow  $\mu(\rho)$  for the auxiliary problem  $H(\rho)$ changes with  $c_{sw}$ : Increasing  $c_{sw}$  can cause a flow line  $\mu(\rho)$ , which had no zero crossing at  $c_{sw} = 0$ , to develop a local maximum (or minimum) which eventually crosses zero from below (above) as  $c_{sw}$  is increased further. Two new crossings appear, one with positive and one with negative slope. Thus, due to (10), this gives rise to two real eigenvalues with eigenvectors having opposite chirality. We remark that the discussed mechanism is the only way that additional zero crossings, i.e. real eigenvalues of K(D) can emerge, since the total number of zero crossings is even. This follows from the continuity of the flow lines in  $\rho$  and the simple limiting behavior of  $H(\rho)$ . For  $\rho \to \pm \infty$  one has  $H(\rho) \to \pm \gamma_5 \mathbb{I}_{volume \times N_{color}}$ , and the limiting matrices both have  $2 \times volume \times N_{color}$  eigenvalues of  $+\rho$  and  $2 \times volume \times N_{color}$  eigenvalues  $-\rho$ . The flow lines connect the eigenvalues of the limiting cases and thus only an even number of zero crossings can emerge. Hence the above discussed mechanism for the creation of zero crossings is the only possibility to create new crossings, implying that the additional real eigenvalues of K(D) are always created in pairs of opposite chirality.

In order to demonstrate this mechanism we isolated the flow  $\mu(\rho)$  of a single small eigenvalue of  $H(\rho)$  which exhibits the discussed phenomenon and present this plot in Fig. 4. We show how a particular flow line creates two new zero crossings as  $c_{sw}$  is increased from the perturbative value  $c_{sw} = 1.258$  to  $c_{sw} = 1.4$ . We also show the flow for the intermediate values  $c_{sw} = 1.3$  and  $c_{sw} = 1.35$ . For  $c_{sw} = 1.258$  the flow has no crossing of zero. When increasing the coefficient to  $c_{sw} = 1.3$  we find that a clear minimum has developed and the flow line is almost touching zero. At  $c_{sw} = 1.35$  it has moved further down giving rise to two crossings of zero, i.e. two additional real eigenvalues of K(D). At  $c_{sw} = 1.4$  the crossings of zero have moved a little and are now at approximately 2.35 (negative slope, i.e. negative chirality) and at 2.9 (positive chirality).

To further study the phenomenon of proliferation of real eigenvalues

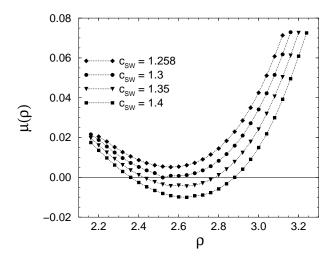


Figure 4: Plot of the spectral flow  $\mu(\rho)$  for a small eigenvalue of the auxiliary operator  $H(\rho)$  at  $c_{sw}=1.258,1.3,1.35$  and  $c_{sw}=1.4$ . The flow develops two zero crossings as  $c_{sw}$  is increased giving rise to two real eigenvalues of K (or D) which have eigenvectors with opposite chirality due to (10).

when increasing  $c_{sw}$  we numerically evaluated some of the matrix elements which occur in first and second order perturbation theory (in  $c_{sw}$ ) for eigenvalues  $\lambda(c_{sw})$  of the operator  $K = Q - c_{sw}C$ 

$$\lambda(c_{sw}) = \lambda(0) - c_{sw}\psi_{\lambda(0)}^{\dagger}C\psi_{\lambda(0)} + c_{sw}^{2} \sum_{\mu \neq \lambda(0)} \frac{\left|\psi_{\lambda(0)}^{\dagger}C\psi_{\mu}\right|^{2}}{\lambda(0) - \mu} + O(c_{sw}^{3}).$$
(11)

Here  $\lambda(0)$  is the eigenvalue of K without improvement  $(c_{sw}=0)$  and  $\psi_{\lambda(0)}$  is the corresponding eigenvector. Since C is a hermitian matrix it is clear that the first order term is real and simply shifts the eigenvalues parallel to the real axis. Already existing real eigenvalues remain real. This linear term seems to be the main contribution for the shift of the spectrum towards larger real parts which was already discussed for Figs.1, 2 and 3. When analyzing the second order term for some real eigenvalue r we find  $|\psi_r^{\dagger}C\psi_{\mu}|^2 = |\psi_r^{\dagger}C\psi_{\overline{\mu}}|^2$ . Since both,  $\mu$  and  $\overline{\mu}$  occur in the sum for the second order term the imaginary parts cancel and we find that the real eigenvalue r is only shifted along the real axis. Again we see that existing real eigenvalues remain real. For complex eigenvalues  $\lambda$  we found that the second order term

leads to a shift essentially parallel to the imaginary axis and always directed towards the real axis. Thus in second order complex eigenvalues can move closer to the real axis and eventually become real eigenvalues.

To summarize this section we find that for thermalized gauge fields the clover term leads to a proliferation of real eigenvalues. The above given argument, based on the spectral flow for the eigenvalues of the auxiliary problem, shows that the eigenvalues are generated in pairs and the corresponding eigenvectors have opposite chirality. A perturbative analysis up to second order in  $c_{sw}$  shows that existing real eigenvalues remain real, but complex eigenvalues tend to move towards the real axis.

#### 6. Index theorem and fermionic definition of the topological charge

The fact that the additional real eigenvalues come in pairs with opposite chirality means that in principle they cancel each other in the lattice version (8) of the index theorem. However it is also obvious from Fig. 3 that already for  $c_{sw} = 0$  the separation of physical and doubler branches is not very pronounced and the additional real eigenvalues make this situation worse for  $c_{sw} > 0$ . In this section we concentrate on the real spectrum and address the question if the separation of physical and doubler branches is large enough so that one can speak of a probabilistic lattice manifestation of the index theorem in a meaningful way.

Fig. 5 shows our results for 10 thermalized configurations which for further reference were numbered (#1 - #10). We also quote the topological charges that were assigned to these configurations after cooling in [18]. The figure shows the real spectra for  $c_{sw}=0$  and  $c_{sw}=1.4$ . For both cases we computed all real eigenvalues larger than 1.8 in order to see at least a few of the real eigenvalues in the doubler branch. In the plot we also encode the chirality of the corresponding eigenstates. An upward pointing triangle means positive and a downward pointing triangle indicates negative chirality.

Let's first discuss the spectra for the case without clover term. From the arbitrarily chosen sample we show here it is obvious, that the real eigenvalues are rather evenly distributed and only for configuration # 5 one can speak of a reasonably separated physical branch. For the other configurations it is unclear where to set the threshold for the physical modes.

We conclude that for this particular setting (SU(2),  $12^4$ ,  $\beta = 2.4$ ) the naive approach to a probabilistic lattice interpretation of the Atiyah-Singer index theorem by simply counting the real eigenvalues in the physical branch seems problematic.

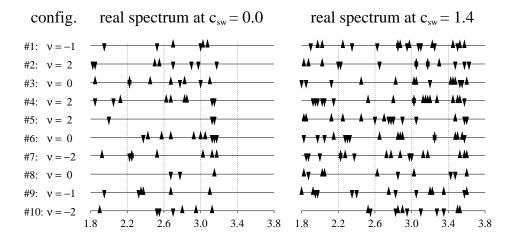


Figure 5: Real eigenvalues larger than 1.8 for 10 thermalized gauge field configurations. The value of  $\nu$  given on the right hand side of the plot was assigned after cooling [18]. An upward pointing triangle is the symbol for an eigenvalue with positive chirality while a downward pointing triangle indicates negative chirality.

In this context it is interesting to remark, that Narayanan and Vranas [12] obtained a surprising result using the fermionic overlap definition of the topological charge and averaging over large samples of quenched gauge field configurations (also for SU(2),  $12^4$ ,  $\beta=2.4$ ). Narayanan and Vranas take into account all real eigenvalues larger than 3 and discard the smaller ones as doublers. From our plots it is clear that even if one is willing to define 3 to be the boundary between physical modes and doublers this definition disagrees in several cases (# 2, # 6, # 7, # 8, # 10) with the cooling results and is not justified on a one by one basis. However after sampling 140 configurations [12], the result for the distribution of the topological sectors [18] from improved cooling is reproduced with good accuracy. This comparison of the averaged result with the analysis of single configurations indicates that there might be a mechanism which averages the results from counting the eigenvalues such that the distribution of the topological charge matches the outcome of the improved cooling analysis.

As already discussed in Section 5, the clover term does not improve the situation for the lattice index theorem. For a larger sample this is now demonstrated on the right hand side of Fig. 5 where we show the 10 real spectra now at Sheikholeslami-Wohlert coefficient  $c_{sw} = 1.4$ . Although the

additional real eigenvalues come in pairs of opposite chirality and thus in principle cancel in (8), from a technical point of view the extra real eigenvalues are very unpleasant since the idea of dividing the eigenvalues into physical and doubler modes becomes even more unrealistic than at  $c_{sw} = 0$ . However, also for  $c_{sw} > 0$  a phenomenon similar to the  $c_{sw} = 0$  case might occur, which would give the correct distribution of the topological charge when averaging large samples. It would be interesting to study and understand such a possibility in more detail.

#### 7. Discussion

In this article we have studied the spectrum of the lattice Dirac operator and investigated the interplay between topological charge and spectral properties. The effects of the O(a)-improving clover term were analyzed.

For relatively smooth toy configurations (constant plaquette fields + small fluctuations) on  $4^4$  lattices we find that the clover term leaves the physical branch of the spectrum rather unchanged while the bulk of the eigenvalues is slightly deformed. For the smooth toy configurations the lattice realization of the Atiyah-Singer index theorem is not affected by the clover term.

When analyzing smooth configurations on larger lattices obtained using the improved cooling method in [18], we even find improvement of the spectral properties when adding the clover term, i.e. the eigenvalues at the physical edge of the spectrum allign along an ellipse and the pseudoscalar matrix elements are close to  $\pm 1$ .

For the thermalized configurations ( $12^4$ ,  $\beta=2.4$ ) a naive attempt to interpret the real spectrum in terms of a probabilistic manifestation of the index theorem by simply counting the real eigenvalues in the physical branch is problematic. We observe, that there is no reasonable separation of physical modes and the doubler branches. The real eigenvalues in the physical branch which have to be taken into account for the lattice version of the index theorem cannot be identified reliably for this setting. We remark however, that summing over large samples seems to average out the error in the number of real eigenvalues in the physical branch and the distribution of the topological charge agrees with the result from improved cooling [12]. It would be interesting to understand this mechanism in more detail.

Adding the clover term makes the separation of physical eigenmodes and doublers even more difficult by creating new real eigenvalues. Based on an argument using zero crossings of the spectral flow of the auxiliary operator  $H(\rho)$  we showed that the additional real eigenvalues come in pairs

and the corresponding eigenvectors have opposite chirality. A perturbative argument indicates that existing real eigenvalues are not destroyed by the clover term.

Certainly there is hope, that this situation improves as one goes over to larger lattices and higher  $\beta$ . Such an improvement of the spectral properties, i.e. a clearer separation of physical modes and doublers, leading to a simple probabilistic realization of the index theorem as one gets closer to the continuum limit was observed for QED<sub>2</sub>. Only further analysis can settle the question if a similar scenario holds for SU(N) in 4 dimensions. Also new approaches such as the interpolation idea [10] or perfect actions [23] or other actions [31, 32] which obey the Ginsparg-Wilson relation [33] and are known to obey the index theorem [34] would be interesting to study numerically in 4 dimensions.

Acknowledgements: We would like to thank Philippe de Forcrand, Ion-Olimpiu Stamatescu and in particular Margarita García Pérez for letting us use their configurations from [18] and providing us also with the cooled data thus allowing for a comparison on a one by one basis. We also acknowledge interesting discussions and help from Christian Lang, Stefan Sint and Peter Weisz.

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